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SUPREME COURT OF THE UNITED STATES.

No. 247.

THE UNITED STATES, APP'TS,

vs.

FREDERICK BILLINGS AND AL.

APPEAL FROM THE DISTRICT COURT OF THE U. S. FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

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OFFICE OF THE BOARD OF COMMISSIONERS
To ascertain and settle the Private Land Claims in the State of Cal'a.

Be it remembered, that on this twentieth day of April, anno Domini one thousand eight hundred and fifty-two, before the commissioners to ascertain and settle the private land claims in the State of California, sitting as a board in the city of San Francisco, in the State aforesaid, in the United States of America, the following proceedings were had, to wit:

The petition of Frederick Billings et al., assignees of Bijar Simmons, for the place named "Island or peninsula at the port of San Diego," was presented and ordered to be filed and docketed with No. 188, and is as follows, to wit:

(Vide page 3 of this Transcript.)

Upon which petition the following subsequent proceedings were had in their chronological order, to wit:

LOS ANGELES, *October 8th*, 1852.

In case No. 188, Frederick Billings et al., assignees of Bijar Simmons, for the place known as the "Island or peninsula at the port of San Diego," the deposition of Santiago Arguello, a witness in behalf of the claimant, taken before Commissioner James Wilson, with document marked J. W. No. 1, annexed thereto, was filed.

(Vide page 5 of this Transcript.)

SAN FRANCISCO, *September* 23d, 1853.

Case No. 188 called; on motion of the counsel for the claimants, ordered to the foot of the docket.

SAN FRANCISCO, *September 19th*, 1854.

Case No. 188, on motion of the counsel for the claimants, with the consent of the United States law agent, was ordered to be placed at the foot of the 2d class cases on the trial docket.

SAN FRANCISCO, *October 18th*, 1854.

In the same case the deposition of Thomas D. Johns, a witness in behalf of the claimants, taken before Commissioner Peter Lott, was filed.

(Vide page 6 of this Transcript.)

SAN FRANCISCO, *October 24th*, 1854.

Case No. 188 was submitted without argument.

In the same case the deposition of Frederick Billings, a witness in behalf of the claimant, taken before Commissioner Alpheus Felch, was filed.

(Vide page 8 of this Transcript.)

In the same case the counsel for the claimant filed the following stipulation, to wit:

(Vide page 10 of this Transcript.)

In the same case the counsel for the claimants filed the following motion, to wit:

(Vide page 11 of this Transcript.)

Which having been considered, was granted, and ordered that the petition be annexed in accordance therewith.

SAN FRANCISCO, *October* 31, 1854.

In the same case Commissioner S. B. Farwell delivered the opinion of the board rejecting the claim.

(Vide page 39 of this Transcript.)

And the following order was made, to wit:

(Vide page 41 of this Transcript.)

To the Honorable Commissioners to settle Private Land Claims in California:

The petitioners, Frederick Billings, James R. Batton, and Henry W. Halleck, assignees of Bijar Simmons, respectfully show, that on the 15th day of May, A. D. 1846, Pio Pico, governor of California, by virtue of authority in him vested, granted to Pedro C. Carrillo the island or peninsula of San Diego, situate in the present county of San Diego, containing 2 square leagues, with the boundaries described in the grant, a copy of which is submitted herewith, marked "A," with a translation marked "B."

That on the 20th day of October, 1846, the said Pedro Carrillo sold and conveyed the said tract of land to the said Bejar Simmons, a copy of which conveyance is submitted herewith, marked "C," with a translation marked "D."

That on the 3d day of September, A. D. 1850, the said Bejar Simmons, by deed of assignment, conveyed the said tract of land to the petitioners, a copy of which deed of assignment is submitted herewith, marked "E." And the petitioners further show that the said land has not been surveyed by the surveyor general of the United States, such survey, from the nature of the case, being unnecessary, the boundaries being natural, and not to be mistaken.

That since the year 1846, the said Pedro C. Carrillo, Bejar Simmons, and the petitioners have been, and the petitioners now are, in the quiet, peaceful, and undisputed possession of the said tract of land.

That they know of no conflicting claim.

That they rely for confirmation of title upon the original papers, copies of which are submitted herewith, upon the records and minutes in the archives now under the charge of the surveyor

general, and upon such other and further proofs as they may be advised as necessary.

Wherefore they pray the commissioners to confirm to them the said tract of land.

By their att'ys,

HALLECK, PEACHY & BILLINGS.

Filed in office April 20th, 1852.

GEO. FISHER, *Sec'y.*

No. 188.

OFFICE OF THE U. S. LAND COMMISSION,
Los Angeles, Oct. 8th, 1852.

On this day, before James Wilson, one of the commissioners for ascertaining and settling private land claims in California, came S. Arguello, a witness produced in behalf of the claimants, Frederick Billings et al., assignees of Bezar Simmons, whose petition is No. 188 on the docket of the board, and was duly sworn. His evidence being given in Spanish, was interpreted by the secretary.

The law agent of U. States was present, by R. Greenhow, esq., and did not object.

1st question. What is your name, age, and place of residence?

Answer. My name is Santiago Arguello; my age is sixty years; and I reside near the port of San Diego, and have lived in California all my life.

2d question. Examine the document before you, marked J. W. No. 1, and say whether you are acquainted with the signature, and if the document is genuine?

Answer. I have examined the document, and am acquainted with the signature of Pio Pico, José Matias Moreno, José R. Arguello, Pedro C. Carrillo, H. D. Fitch, Santiago E. Arguello, Miguel Pedrorena, and José F. Snooks; their signatures to this document are genuine, and the document itself, to the best of my knowledge and belief, is also genuine.

S. ARGUELLO.

October 8th, 1852. Subscribed to and sworn before me.

JAMES WILSON,
Commissioner.

Filed in office Oct. 8th, 1852.

GEO. FISHER, *Sec'y.*

UNITED STATES OF AMERICA.
State of California, ss.

SAN FRANCISCO, *Oct.* 18, 1854.

Deposition of Thomas D. Johns—188 c.

This day came before Peter Lott, commissioner for taking testi-

mony to be used before the board of U. S. land commissioners in said State, Thomas D. Johns, a witness in behalf of the claimants, Frederick Billings et al., in case No. 188 on the docket of said board, and said witness being sworn, deposed as follows:

The U. S. associate law agent is present.

Questions by Capt. Halleck, for Claimants.

1st question. What is your name, age, and place of residence?

Answer. My name is Thomas D. Johns; my age 29 years; my residence, San Francisco, California.

2d question. Do you know the place called the island or peninsula of San Diego? If yea, where is it situated, and what are its boundaries?

Answer. I know the place mentioned. It is a peninsula, bounded on the south by the Pacific ocean, on the north and west by the bay of San Diego, and on the east by the main land; the boundary line on the east is marked by a sandy beach a scant half-mile wide, a low neck of land, which separated said peninsula from the main land.

3d question. Do you know of any improvement made on this land? If yea, what are they, and by whom made?

Answer. I know of three houses having been erected in different points of the island in the summer or fall of 1850, by the agent of William H. Aspinwall.

Cross-examination by U. S. Associate Law Agent.

1st question. How much land is embraced in said peninsula?

Answer. I suppose there are about one thousand acres altogether.

2d question. What was the name of that agent, and what was the object of building these houses?

Answer. His name is Charles R. Johnson, and the houses were built to keep possession and keep off squatters.

3d question. How long is said peninsula?

Answer. It is about 8 miles long.

4th question. How do you know said Johnston was Aspinwall's agent?

Answer. He told me he built those houses under orders from Mr. Robinson of this place, who is Aspinwall's agent here. He (Johnson) was also agent of the Pacific Mail Steamship Company at San Diego.

THOMAS D. JOHNS.

Subscribed and sworn to before me on the 18th day of October, 1854.

PETER LOTT,
Com'r, &c.

Filed in office Oct. 19, 1854.

GEO. FISHER, *Sec'y*

Deposition of Frederick Billings.

UNITED STATES LAND COMMISSION,
San Francisco, Oct. 24, 1854.

On this day, before Commissioner Alpheus Felch, came Frederick Billings, a witness on behalf of the claimants, Frederick Billings et al., case No. 188, who after being duly sworn, deposed as follows:

1st question. What is your name, age, and place of residence?

Answer. My name is Frederick Billings; my age thirty-one years; residence San Francisco, in California.

2d question. Did you ever know Bezar Simmons; and if yea, is he living; and if not, where did he die, and who were his heirs?

Answer. Bejar Simmons was my brother-in-law; we came to California together; knew him most intimately. He died on the 25th or 26th day of September, A. D. 1850, in San Francisco; his wife died before him, and they had no children. His father and mother are both dead; they formerly lived at Woodstock, Vermont; his heirs are his brothers and sisters, and their names are Orrin Simmons, Henry Simmons, Nathan P. Simmons, Benjamin F. Simmons, Priscilla Simmons, Ann F. Ryder, and Augusta S. Bartholemew. I know them all personally except the latter; her I only know through information derived from the others. Our sister Pelly is dead; she died a widow, and left one child. I think the name of her husband was McCall, but the christened name of the child I do not recollect.

FREDERICK BILLINGS.

Subscribed and sworn to before me this 24th day of October, 1854.

ALPHEUS FELCH,
Commissioner.

Filed in office Oct. 24th, 1854.

GEO. FISHER, *Sec'y.*

Stipulation.

No. 188.

In the claim of assignees of Bezar Simmons to "Isla de San Diego."

It is hereby agreed by the assistant law agent on the part of the United States, that the counsel for the claimants have leave to withdraw the original deed of assignment of Bezar Simmons to F. Billings, J. R. Bolton, and H. W. Halleck, submitted in evidence on the trial of this case, and that the copy marked "E," and filed in this case, and marked "E," shall be deemed and considered as of the same force and effect as the original of which it purports to be a copy.

LOUIS BLANDING,
U. S. Ass't Law Agent.

Filed in office Oct. 24th, 1854.

GEO. FISHER, *Sec'y*

Motion to amend Petition.

No. 188.

Before the U. S. Commissioners to ascertain and settle Private Land Claims in California.

In the claim of Bezar Simmons' assignees, &c., to "Isla de San Diego."

Moved that the petition in this case be amended by inserting the name of Orrin Simmons, Henry Simmons, Nathan P. Simmons, Benjamin Simmons, Priscilla Simmons, Ann S. Ryder, and Augusta S. Bartholemew, heirs-at-law of Beza Simmons.

HALLECK, PEACHY & BILLINGS,
Atty's for Claimants.

Filed in office Oct. 24, 1854.

GEO. FISHER, *Sec'y.*

1846.

Expediente promovido por el ciudadano Pedro C. Carrillo, en pretencion del terreno llamado isla ó peninsula, situado en el puente de San Diego compuesto de dos sitios de ganado mayor.

No. 554.—Año de 1846.

[L. S. D. K.]

Expediente promovide por el C. Pedro Carrillo, en solicitud del parage de isla ó peninsula, en la jurisdicion de San Diego.

[3 S. D. K.]

S'or Sub-prefecto del pentido de San Diego:

Pedro C. Carrillo, natural de este departmental de Californias, y avecindado en este puerte ante V. con el divido respecto y conforme a derecho se presente y dice que cariciendole un terreno proprio para le cria de ganado mayor y menor y caballader, y deseoso de fomentar estos intereses cito un terreno valdio, en las limites de este puerto por la parte del sur, conocido con el nombre de la isla ó peninsula que forma el puerto de S'n Diego, el cual contiene poco mas ó menos dos leguas ó citios segun diseño que acompañee, siendo dicho terreno propria para un potrero con cuyo fin lo pide, y linde al norte con el entro de dicho puerta, al oriente con la punto de D'n Agustin Melijo, al sur con el mar y al poniente con la bahia pon el castero de los buques y suplico a V. que previos los informes que tenga a bien tomarse, sirva conceder melo pasando el expediente al ex'mo pr. gobernador del departmento para qe. se

sirva mandar qe. se mi estienda el correspond'te, titulo de propiedad por le tanto a V. pido y suplico, se sirva provier del modo, y forma que llevo pedido en lo qual recevire gracia y merced jurando no su de malicia y lo necessario admitiendome este en papel comun por falta del sellado.

S'n Diego, Abril 21 de 1846.

PEDRO C. CARRILLO.

SAN DIEGO, *Ap'l* 21 *de* 1846.

Sirvase informar al pied segundo de esta poblacion acerea de la solicitud que han D'n Pedro C. Carrillo, si el paraje que putendise este valdio ó corresponde a particular corporacion y evacuado, que sea vuelva el exped'te, a este sub prefectura para las demas fines.

ARGUELLO.

SAN DIEGO, 21 *de Abril*, 1846.

El parage que solicite el ciudadano Pedro Carrillo se halla enteram'te valdio y no pertenese a propiedad alguna y de conseg'te puede consederlo.

JUAN MA. OSUNA.

[5 S. D. K.]

EX'MO S'OR: En los informes pedidos con respeto al parage de la isla ó peninsula que solicita el c'no Pedro Carrillo resulta ser entiramente valdio, sin que de sea consecion resulta ni perjuicio de V. portanto pr. la superioridad cotiene a bien poder adjudicar selo al solictante por carecer de terreno proprio y concurir en su persona los requisitos de coloni.acion.

San Diego, Abril 21 de 1846.

JOSÉ R. ARGUELLO.

ANGELES, *Mayo* 15, *de* 1846.

Vista la solicitud con que da principio este expediente los informes necessarios con todo lo demas que se tuvo presente y ver convino de conformidad con la ley de 18 de Agosto de 1824, y reglamento de 21 de Noviembre de 1828, declara a D'n Pedro Carrillo, diseño en propiedad del terreno conocido ó nombrado isla ó peninsula en el punto de San Diego, hacia a la parte del este del fundadero; librese el titulo correspondiente, y reservese el expediente para someterle a la aprobacion de la ex'ma asamblea departmental.

[6 S. D. K.]

Pio Pico, gobernador constitucional de California asi lo mando decrete y firme doy feé.

PIO PICO.

JOSÉ MATIAS MORENO, *S'rio.*

[7 S. D. K.]

[*Here follows map—see original, page* 14.]

[8 S. D. K.]

Pio Pico, Gobernador Constitucional del Departmento de California.

Por cuanto D'n Pero Casarino Carrillo ha pretendido para su beneficio personal y el de su familia el terreno conocido con el nombre de isla ó peninsula en el puerto de San Diego, practicadas previamente las averiguaciones consernientes, usando de las facultades qe. mi son conferidas a nombre de la nacion Mejicana he venido por decreto de este dia en concederle el espresado terreno, declarandole la propiedad de el por las presentes letras, de conformidad con la ley de 18 de Agosto de 1824, y reglamento de 21 de Nov're de 1828, a reserva de la aprovacion de la E. A. D., y bajo las condiciones siguientes:

1a. Podra cercarlo sin perjudicar las travecias caminos, y servidumbres; lo disfrutara libre y esclusivamente destinandole al uso ó cultivo que mas le acomode.

2a. Solicitara del juez respectivo que le di la posecion juridica en vertud de este despacho por el cual se demarcaran los linderos.

3a. El terreno de que se lo hace donacion es de dos sitios de ganado mayor y lindu al N. con el estero del puerta de San Diego hacia la poblacion al ó con la punta, del rancho de Don Agustin Melijo al S. con el mar y el poniente con la bahia ó fondeadero de los buques, segun esplica el diseño que obra en el exped'te. El juez que le de posecion lo hora medir conforme a ordenanza.

En consecuencia mando que teniendose el presente titulo por forme y valedero se tome razon de el en el libre a que corresponde y se entregue al interesado para su resguardo y demas fines.

Dado en la ciudad de Los Angeles, en este papel comun por falta de sellado a 15 de Mayo de 1846.

OFFICE OF THE SURVEYOR GENERAL OF THE UNITED STATES FOR CALIFORNIA.

I, Samuel D. King, surveyor general of the United States for the State *for the State* of California, and as such now having in my office, and under my charge and control, a portion of the archives of the former Spanish and Mexican territory or department of Upper California, do hereby certify that the nine preceding and annexed pages of tracing paper, numbered from one to nine inclusive, and each of which is verified by my initials, (S. D. K.,) exhibit true and accurate copies of certain documents on file and forming part of the said archives in this office.